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SUBJECT: Canada's Human Rights Council Universal Periodic Review

Summary

¶1. On February 3, an 18 member delegation from the Government of Canada led by Deputy Justice Minister John Sims, participated in the Human Rights Council (HRC) Universal Periodic Review (UPR) Working Group "interactive dialogue." During this three hour session, Canada described its actions to protect human rights and received extensive questions and recommendations from governments. Pursuant to normal UPR processes, on February 5, the HRC Working Group issued a report regarding Canada, containing 68 specific recommendations for consideration by the GOC. Canada will appear again in June before a plenary session of the HRC to discuss the report and announce which of the recommendations it accepts.

¶2. To make initial preparations for the US Government's December 2010 UPR report and Working Group presentation, the Assistant Legal Adviser for Human Rights and Refugees and Mission Geneva policy and legal staff attended Canada's sessions, met with senior UN Secretariat staff, the UK and the Danish Missions on the UPR process, and held an "after action" briefing with the Canadian Government following the conclusion of Canada's Working Group process. This cable describes the Canadian process and some of the highlights from those private meetings. End Summary

An Overview of the UPR Process

¶3. The General Assembly Resolution creating the Human Rights Council (60/251) decided that the Council would "undertake a universal periodic review . . . of the fulfillment by each State of its human rights obligations and commitments." It further provided that the "review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned." Three times each year, the Human Rights Council holds Working Group sessions for the UPR.

¶4. For each country, the working group review is based on three written documents: (1) a twenty page national report by the country being reviewed; (2) a UN Secretariat staff compilation of NGO comments; and (3) a UN Secretariat staff compilation of treaty body, special procedure and other UN documents related to the human rights performance of the country under review. For each country, a "troika" of representatives from three Council Member States works with the Secretariat and the country in question to facilitate the review. Prior to the review, countries may provide advance written questions and recommendations to the Troika, to be transmitted to the reviewed country no later than 10 days before the working group session. The principal action by the working group is a three hour "interactive dialogue," where the country presents its national report and addresses questions from human rights council Member and Observer States. Representatives from civil society do not speak during this part of the process.

¶5. During the interactive dialogue, countries present both questions and recommendations for action by the country. During the two or three days between the interactive dialogue and the adoption of a report on the country by the Working Group, the secretariat staff and the Troika consult with the country on the drafting of the report, which includes a list of the recommendations made by states during the interactive dialogue. At the end of this stage of the process, the working group holds a very short meeting (typically 30 minutes or less) in which it adopts the report.

¶ 16. In a three hour, well attended interactive dialogue, Deputy Justice Minister Sims and his delegation presented the Canadian report and answered questions. Pursuant to the rules of the session, Canada was given exactly one hour to speak, with the rest of the time devoted to short (i.e., two minute) statements, questions and recommendations by Human Rights Council Member States and Observers. (Comment: Typically Member States have three minutes to make their statements from the floor, while Observers have two minutes. Given the unprecedented number of States wanting to make comments and offer recommendations, the Chairman decided to allow all States (irrespective of membership status) only two minutes to speak. The HRC maintains a large digital clock at the front of the room, which kept track of Canada's 60 minutes and individual countries' two minute interventions. Several delegations commented on the unfairness presented by such long speakers lists: in such a situation, some States who have signed up to speak during the interactive dialogue may not, in the end, realize their opportunity to do so if they find themselves toward the end of the list and time has run out for State interventions before their turn is due. Furthermore, only those States who actually make statements and offer recommendations from the floor will be allowed to have their recommendations reflected in the Working Group report for the state under review. Therefore, States that have not had the opportunity to comment from the floor are also effectively excluded from having their recommendations noted in the report. This is an issue with which the HRC will inevitably have to contend, given the rise of concerned voices on this development.)

¶ 17. Opening Statement. Canada opened the meeting with a twenty minute statement. This statement was a broad overview of human rights enforcement in Canada. (Comment: A Danish diplomat later privately stated that, given the limited amount of time countries are given to answer the hundreds of questions posed to them, Canada would have done better to have not given such a broad overview, but to have begun to answer specific questions it had received from the Troika prior to the session. Canada explained after the session ended that it was difficult to answer specific questions, both because it received some from the Secretariat only a week before the session and because only seven countries had shared questions in advance through the Troika, as contemplated in the UPR procedures. End Comment.)

¶ 18. Following the opening statement, the chairman posted a list of 69 countries that wished to ask questions and present recommendations. Given the strict three hour time limit for the session and the rule that the country under review is given one full hour to speak, the Chair informed the countries that each would be given only two minutes to make its intervention. In practice, the chair was not strict in prohibiting longer interventions. Accordingly, only 45 of the 69 countries wishing to speak were given the opportunity. The questions and recommendations of the other twenty-four countries were not included in the UPR report or in the list of recommendations for Canadian consideration. (Comment: Should the USG decide to participate in UPR sessions as an observer in the future, if it wishes to ensure that there will be time to speak, it will need to ensure that it sends someone early to wait in line to sign a speakers' list. On the Thursday interactive dialogue for Cuba, only 61 of the 102 countries that wished to speak were able to do so.)

¶ 19. Questions for Canada fell into several categories, many of which will also be relevant for the United States:

- (a) procedures for dealing with terrorist suspects and whether they involve improper racial profiling;
- (b) treatment of people in detention, including women and juveniles;
- (c) the need for increased measures to prevent and punish violence against women (including indigenous women) and the fact that Canadian law does not create a special criminal offense for domestic violence;
- (d) improving the domestic consultation with NGOs and First Nations within Canada for writing the UPR report, for considering recommendations going forward, and in implementing Canadian human rights obligations generally;

-(e) high levels of poverty and other economic and health disparities within Canada, especially as they apply to racial minorities and indigenous people;

-(f) instances of harassment and racial discrimination of racial minorities, including people in Muslim and Arab communities;

-(g) the treatment of foreign workers (including recommendations to ratify the UN Migrant Workers Convention);

-(h) a wide range of recommendations related to indigenous peoples, including developing a national action plan, improving their socio-economic conditions (including housing, education, health and employment), settling land disputes, and changing its position with respect to the UN Declaration on the Rights of Indigenous Peoples and consider ratifying ILO Convention 169;

-(i) various recommendations to ratify virtually every human rights-related treaty to which Canada is not currently a party (including enforced disappearances, the protection of people with disabilities, the optional protocol to the Convention Against Torture, the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights and several International Labor Organization conventions);

-(j) use of force by law enforcement officers, including the use of electronic "tasers" as a restraining/control device;

-(k) immigration procedures and implementation of Canadian non-refoulement obligations related to torture;

-(l) make economic, social and cultural rights directly enforceable in Canadian courts; requests by some to reconsider its decision not to participate in the April 2009 Durban Review Conference;

-(m) questions related to the death penalty, particularly Canada's decision to stop seeking clemency as a blanket policy for Canadian nationals sentenced to death in countries that apply the death penalty consistently with international law (e.g., the United States);

-(n) improving ways to implement human rights obligations by Provincial authorities; and

-(o) activities by the Canadian armed forces in Afghanistan and in situations outside Canadian territory in which it might be an occupying power.

¶10. Following its initial statement, Canada spoke three additional times at thirty minute intervals to respond to country questions and observations. During these interventions, the Canadian delegation addressed issues in thematic clusters, such as racism, treaty ratifications, and immigration processes. At the end of the Session, Canada used its remaining twenty minutes to answer remaining questions and to summarize generally its human rights policy.

The Working Group Report and Next Steps

¶11. In the two days following the interactive dialogue and before the thirty minute Working Group session that adopted the UPR report for Canada, the Canadian delegation worked with the Troika (comprising the United Kingdom, Azerbaijan and Bangladesh) and the UN Secretariat staff in the writing of the report. This brief summary of the behind the scenes process is based on conversations with the Canadian participants, UK Mission staff, and with Senior UN Secretariat Staff (Human Rights Council Secretary, Eric Tistoune). As a principal element of the report is reducing to writing the myriad recommendations emerging from the interactive dialogue, the Troika on February 4 shared with Canada both the list of questions and, later in the day, its attempt to summarize the Canadian oral interventions.

¶12. Although countries under UPR review are not supposed to edit recommendations made to them, they are given wide latitude to help the Troika and Secretariat edit them into more logical categories. Countries are also given wide latitude to correct the report of their own remarks at the interactive dialogue. Accordingly, Canada worked late into the evening on February 4 to put the many country recommendations into more logical thematic categories and to edit and, in some instances, substantially rewrite the description of their oral presentation. In the morning of February 5, the Secretariat and Troika asked countries to review the recommendations attributed to them for any last minute editing.

¶13. Adoption of the UPR Report. At the end of each UPR Working Group process there is a short, largely pro forma, session dedicated

to the adoption of the UPR report. The reports themselves provide a summary of the interactive dialogue (which include statements by the country under review and the comments of the other states) and a section on "Conclusions and/or Recommendations." In the case of Canada this section only contained recommendations and no conclusions. Although countries under review are free during this session to announce whether they intend to adopt any particular recommendations, countries are increasingly following the approach of the United Kingdom, which during its review simply said that it would evaluate all of the recommendations and inform the Council subsequently of which recommendations it would endeavor to implement.

¶14. On February 5, the Canadian report was adopted with a very few final editorial suggestions by those governments that had not yet given changes to their recommendations. (Countries who spoke are given two weeks to provide revisions to the sections in the report more generally describing their interventions. However, any final changes to country recommendations must be made at the time of the adoption of the Working Group report.) Canada, following the UK approach, announced that it would study these recommendations carefully in collaboration with its provinces and in consultation with its civil society. It will provide its responses in advance of consideration of the Canadian report before the plenary session of the Human Rights Council in June of 2009.

After Action Assessment

¶15. On the afternoon immediately following adoption of the Canadian Report, Assistant Legal Adviser Harris, and U.S. Mission Pol and Legal officers met with the Canadian Government participants to discuss what, in their view, had been successful in their writing and presentation of their report and what things they would do differently in the future. Canadian participants said that their principal conclusions were that they wished they had started the process of writing the report earlier than they had. They also noted that they were criticized for not having a substantive consultation with Canadian civil society and First Nations until after it had submitted the Canadian report to the HRC. With respect to the staffing of their delegation at this session, they underscored the importance of having a high level delegation on hand that can respond comprehensively and authoritatively on questions presented during the session. That senior level participation is especially important as Canada will have only four months to evaluate which among the many recommendations it would be able to implement. As such implementation in many cases would require changes in federal and provincial law and the expenditure of significant resources, having senior level leadership in Ottawa seized of the issue will be imperative to allow Canada to respond positively at the June HRC session. Other observations will be conveyed less formally to the State Department action officers working on UPR.

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